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# Case and Comment

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#### Right to Bathe at Seashore.

The question as to the rights of citizens to use the seashore for bathing purposes arose in the recent case of *Butler v. Atty. Gen. (Mass.)* 8 L.R.A.(N.S.) 1047, 80 N. E. 688. It arose on a petition for the registration of a title to an estate on the seashore at Gloucester. There was a claim made that owners of neighboring estates along the shore, and the general public also, had a right to use the beach for bathing as well as for fishing, fowling, navigation, and for general purposes. The common-law rule in Massachusetts was that private ownership extended only to high-water mark, but by the Colony Ordinance of 1641-47, private ownership, subject to the right of navigation and other public rights, was extended to "low-water mark where the sea doth not ebb above 100 rods, and not more wheresoever it ebbs further." The question was, therefore, whether the use of the shore for bathing purposes was included in these public rights saved by the ordinance. The court held that the right to swim or float in or upon public waters was as clear as the right to navigate them, but that this did not include a right to use the beach or shore above low-water mark within the 100-rods limit fixed by the ordinance for bathing

purposes, whether such shore was covered with water or not; that is, under the colonial ordinance, the entire property in the seashore to the distance of 100 rods from the high-water mark of the sea was private property not subject to any public use for bathing.

There are not many cases in which this question has been considered, but the case of *Blundell v. Catterall*, 5 Barn. & Ald. 268, as shown by the note to the Massachusetts case in 8 L.R.A.(N.S.) 1047, has generally been regarded as settling the question against the existence of the right. The right of bathing in the sea is clearly a public right belonging to everyone; but the right to cross private property to reach the sea is not recognized. 1 Farnham, Waters, p. 657. Public highways and landings may be used to reach the water, and the shore, if it belongs to the public, is also available for that purpose for those who can reach it without trespassing on private property; but, where the shore between high and low water mark belongs to private owners, the public have no right to use it for the purpose of bathing. Public regulations may also be established governing the use of the shore for such purposes.

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#### Wrongful Use of Portrait for Advertising.

Another case in which a person's portrait has been wrongfully appropriated by another for advertising purposes has just been decided in the chancery court of New

Jersey by Vice Chancellor Stevens. The plaintiff is Thomas A. Edison. The suit is against the Edison Polyform & Mfg. Co. (not yet reported). The facts, as shown in the opinion, are that the defendant is the successor, through intermediate owners, of persons who bought and obtained a written assignment of Mr. Edison's rights in a certain medicinal preparation for the relief of neuralgia by external application. The defendant, however, was selling a preparation which did not contain one of the drugs in Mr. Edison's formula, and was using on each bottle a label containing a picture of Mr. Edison, and a certificate, falsely purporting to have been signed by Mr. Edison, that the preparation was compounded according to his formula. Mr. Edison sought an injunction against the use of his name, his picture, and this false certificate, and the court gave relief in each of these particulars, to restrain the defendant "from holding out, either in the name of the company, or by certificate, or by pictorial representation, that Mr. Edison has any connection with, or part in, the defendant's business." As to the name, the court said it could not be divorced from the other parts of the representation, but, as the evidence stood, was part of the fraudulent contrivance. With respect to the use of his portrait, the court expressly disapproved the case of *Roberson v. Rochester Folding Box Co.* 171 N. Y. 538, 59 L.R.A. 478, 89 Am. St. Rep. 828, 64 N. E. 442, saying that it could not be sustained on principle, and had been disapproved by the supreme court of Georgia and by the New Jersey court of appeals. On this point, the court says: "If a man's name be his own property, as no less an authority than the United States Supreme Court says it is (*Brown Chemical Co. v. Meyer*, 139 U. S. 542, 35 L. ed. 248, 11 Sup. Ct. Rep. 625), it is difficult to understand why the peculiar cast of one's features is not also one's property, and why its pecuniary value, if it has one, does not belong to its owner rather than to the person seeking to make an unauthorized use of it." It should be remembered, however, that in the Roberson Case the question of a property right in the portrait was, strangely enough, not discussed. This opinion of Vice Chancellor Stevens must command itself to every person's sense of justice. The reason of the matter seems to be too clear for doubt. As "CASE AND COMMENT" said

in July, 1902, commenting on the Roberson Case: "Whatever value there may be, either in a person's portrait or name for trade purposes, must certainly be a property right. Courts protect the name, and, on exactly the same principles, must protect the portrait. The fact that there is a value in a portrait for advertising is the only reason for perpetrating the nefarious outrage of stealing it for such use. When recognized as having a property value, it would be preposterous to say that it does not belong to the person whom the name or the portrait represents." The wrongful appropriator of a portrait for his own profit must certainly be estopped from claiming that it has no value. Even if a court rigidly holds to the doctrine that equity will protect property rights only, when once it recognizes a property value in a portrait for advertising purposes, there is no ground on which to deny equitable protection to the owner.

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#### Substituted Service on Foreign Corporations.

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A statute authorizing a service of summons against a foreign corporation on any cause of action to be made upon a state auditor is held unconstitutional in the recent case of *Cella Commission Co. v. Bohlinger*, 8 L.R.A.(N.S.) 537, 78 C. C. A. 467, 147 Fed. 419, on the ground that a judgment on such service, without notice to the defendant, does not constitute due process of law. The correctness of the decision in this case is established beyond question by authorities cited in note in 50 L.R.A. 577, 591, showing that any form of substituted service to which the defendant has not expressly or impliedly consented is insufficient to constitute due process of law in an action against a foreign corporation which is not doing business within the state. Additional cases, and more recent ones, to the same effect, are presented in the note in 8 L.R.A.(N.S.) 537. In some of these cases resident officers or directors of a foreign corporation which was not doing business within the state were served. In others, officers were served while traveling through, or temporarily within, the state; and in all such cases the service was held invalid. It is somewhat notable that in various states there have long been statutes which in

terms authorize judgments against foreign corporations in actions purely *in personam* on substituted service that in the light of these decisions are invalid. The statutes do not attempt to authorize any such proceedings against individuals. This seems to indicate that legislatures have not regarded foreign corporations as entitled to the same constitutional rights with respect to due process of law that individuals have. The conceded right of the legislature to exclude foreign corporations from the state seems to have given rise to the supposition that such corporations had no rights while in the state except such as the legislature might choose to recognize.

A peculiar theory of jurisdiction seems to be involved in some of the cases which deal with the question of the jurisdiction of a court on substituted service. Repeatedly the courts have used language to indicate that they might acquire by some substituted service a jurisdiction which, while insufficient to sustain a judgment beyond the limits of the state, would be sufficient to uphold a statute within the state.

It must be conceded that, when there is no Federal question in the case, the courts of a state can, if they choose, recognize and enforce a domestic judgment that is not based on any valid service of process. That is only to say that in a purely domestic case the error of the courts of last resort in the state may have no remedy. If a court usurps jurisdiction and the highest court of the state sustains it, the wronged defendant must submit, unless there is some Federal question involved on which he can go into the Federal courts. But it is a strange theory which maintains that a court may have jurisdiction and yet not have it; that it may render a judgment valid in the state but not valid anywhere else. If a state court has jurisdiction, its judgment, by the Federal Constitution, must be given full faith and credit in other states; if it has not jurisdiction, its judgment cannot be really valid anywhere, though the defendant may be compelled to submit to it because he has no remedy. But this theory that a judgment on substituted service may be valid in the state, though invalid elsewhere, has often been declared. For instance, in *Pope v. Terre Haute Car & Mfg. Co.* 87 N. Y. 137, in discussing a judgment against a foreign corporation, the court said: "It would be valid for every purpose within

this state, and could be enforced against any property at any time found in this state. Its effect elsewhere need not now be determined." Courts which have taken this position have generally ignored the fact that, if the court had jurisdiction, the judgment must be as valid under the Federal Constitution in other states as it was in the state where it was rendered. On the other hand, a lack of jurisdiction must, on all sound principles, make it invalid everywhere. Prior to the 14th Amendment, such a judgment, rendered without jurisdiction, might be enforced in the state where it was rendered without remedy, because there was no way of reviewing it in the Federal courts; but, under the 14th Amendment, prohibiting any state from depriving a person of property without due process of law, a judgment without jurisdiction seems to be clearly unconstitutional; and it has long been established that a corporation is a person, within the meaning of this provision. The anomaly of holding that a judgment rendered without jurisdiction, and therefore invalid in other states, can be valid in the state where it was rendered, seems to be necessarily abolished by the 14th Amendment.

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#### The Fruits of Lawlessness.

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The deluge of crimes that has spread over this country is the natural result of the long-continued toleration of lawlessness. Again and again thoughtful men have pointed out the disgrace and the danger of permitting the laws of almost every kind to be disregarded, and in many cases defied. An aroused public has recently started on a determined and successful war against the lawless and criminal practices of corrupt officials and law-breaking corporations. This was the right place to begin in order to demonstrate that the most powerful law-breakers are not above the law; but the whole range of lawlessness among people of every grade needs to be repressed with the same stern and inflexible justice, until it becomes known and fully understood by all men, high and low, that in this country the laws are made to be respected and obeyed.

Violations of law in recent years have in a great variety of matters become almost

the rule, instead of the exception. Why should a newly arrived immigrant respect the laws, when, as he looks around him, he sees that many of them at least are systematically defied with impunity? The first thing he sees in almost any city he enters is that the laws for the regulation of saloons are a farce. He quickly learns that sales of liquors on Sundays and to minors are illegal, but that it is as easy to get served at a saloon on Sunday as on any other day, and that any appearance of obeying the law is only a pretense. He learns, too, that there are laws against lotteries, raffles, and various forms of gambling, but that they are violated persistently and with practical impunity. It may be that, when he gets to his church fair, he finds that, in direct and open violation of the law, raffling schemes of every kind are going on with great success, and probably some of the officers of the law are on hand and participating in the offense. So, the immigrant who looks about him sees many other laws frequently, if not constantly, violated by people who are never punished for their offenses. Perjury in court is often so obvious that everyone, from the judge to the spectator, feels certain that the witness is testifying falsely, yet even an attempt to punish it is so rare that few witnesses who lack scruples on the subject are at all deterred from falsifying their oath when occasion arises. Even the children quickly learn that there are many offenses against person and property that they can indulge in with practical certainty that they will never be punished for them, by either parents or officials. They can steal everything that is portable for an election bonfire, and expect no punishment, or even inquiry, to follow. They may strip all the fruit trees of their neighbors with the same impunity, even in good residence neighborhoods. In a little rougher locality, they may make a pastime of stoning Jew peddlers, or upsetting any old fruit dealer, whether man or woman, and carrying off the fruit, while the policeman is around the corner. Education in all these lines is free, and has the sanction, if not of approval, at least of the substantial acquiescence, of the authorities. Gangs of young men on what they call a "lark" may damage property and create a public disturbance, including a battle with the officers, yet be practically immune from interference. Many drivers of automobiles, to

the peril of their own lives and the lives of others, ride roughshod over the law without the slightest hesitation. In the numerous labor strikes, destruction of property, violent assaults, and murders have generally been treated as almost legitimate incidents of the strike, and weak-kneed authorities have hardly dared do more than merely beg of the strikers to refrain. The violation of the laws against carrying dangerous weapons almost daily results in assaults and murders, but there is yet hardly the beginning of an attempt to enforce them. These are only illustrations of many instances of many kinds in which regularly and almost systematically the laws for the public good are disregarded, defied, and despised. What wonder that, as the result of such an education, we should now have a generation in which lawlessness is like a plague? We are merely reaping what we have sown. Shall our long *régime* of laxity of law continue to educate the incoming masses of ignorant foreigners to think that American liberty means lawlessness? That is the lesson they have been learning, and we are beginning to learn the result. The movement, which is yet barely begun, to bring criminals, great and small, to the bar of justice and under obedience to law, must go on until in every stratum of society men realize that they cannot trifle with law and justice.

#### The Constitution as a Restraint on Democracy.

The idea that our Constitution was adopted as a restraint on democracy seems somewhat novel, but it is propounded as if it were an unquestionable fact, in a recent editorial in a widely circulated periodical. The editor says, in some comments on the English House of Lords: "Even one hundred and thirty years ago the great question concerning democracy was as to how far the people could be trusted to respect property. The impression was that, if given political power, they would at once despoil the rich. So it was deemed necessary to take a bond of them,—to permit them to exercise self-government only under such a restriction as insured protection of property. The restriction in our case is the Constitution; in England, the House of Lords." Un-

deniably there are constitutional guaranties under which the rich, as well as the poor, are protected. There are guaranties of property, but all the provisions in our Federal Constitution which operate to protect property are so incidental, and so nearly lost among the numerous provisions for the protection of the persons and liberties of the people themselves, that it is a grotesque perversion to speak of the Constitution as a bond given by the common people to the rich as a guaranty of property rights. In the original Constitution, outside of the purely public regulations and divisions of governmental functions, there are provisions that habeas corpus shall not be suspended unless in rebellion or invasion, against bills of attainder or *ex post facto* laws by Congress or by the states, guaranties of right of trial by jury, restraints on the power to convict of treason and to punish it, and similar provisions clearly made for the protection of the life and liberty of the individual citizen against oppression by the government. The provisions for the protection of property are well-nigh absent, the chief one, perhaps, being that prohibiting states to pass laws impairing the obligation of contracts. Quite as conspicuous in this particular are the amendments, adopted almost as soon as the Constitution had been established, guaranteeing freedom in religion, freedom of speech and of the press, the right to assemble and to petition, the right to keep and bear arms, protection from the quartering of soldiers, protection against unreasonable searches and seizures, guaranties of grand juries in criminal cases, and against being twice put in jeopardy or being compelled to incriminate one's self, as well as those against being compelled to furnish excessive bail, and against cruel and unusual punishments. In the 5th Amendment the guaranty against deprivation of property without due process of law protects property only in combination with life and liberty. There is also the additional guaranty that private property shall not be taken for public use without just compensation.

Looking over the various provisions of the Constitution, aside from those which deal with the structure and divisions of government, and comparing those which are aimed at the protection of life and liberty with those which are aimed at the protection of property, it becomes too obvious for dispute

that the makers of the Constitution, while aiming to be just to all interests, had far more thought of the protection of the liberties of the people than of their property. It is indeed true that there is a specific provision which in effect protected property in slaves; but a single instance like this is of little force to overcome the numerous provisions for the protection of life and liberty, —especially when it is remembered that this provision as to slaves was in the nature of a political compromise between the different states. Theories of the Constitution have been various; but the calm assumption that the chief reason for its adoption was to protect the rich seems to have been made without much examination of the instrument itself.

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**Adoption.** See DESCENT AND DISTRIBUTION.

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**Bills and notes.** An insertion in a bill of exchange of the words "on account of contract" between the drawer and drawee is held, in First Nat. Bank v. Lightner (Kan.) 8 L.R.A.(N.S.) 231, not to amount to a direction to charge a particular fund, so as to destroy the negotiability of the instrument, but merely to indicate the fund to which the drawee is to look for reimbursement.

**Brokers.** An owner of real estate who sells his property to one induced to purchase it by the efforts of an agent with whom it had been listed for sale for a definite price, but who was not given an exclusive agency, is held, in Quist v. Goodfellow (Minn.) 8 L.R.A.(N.S.) 153, not to be liable for the commission agreed to be paid for the production of a purchaser ready, able, and willing to buy, where the owner acted in good faith and in ignorance of the efforts of the agent, and sold the property for a price less than that named to the agent.

**Carriers.** A railroad company which has accepted a requisition from a fruit importer for cars to receive the cargoes of vessels to arrive during a certain week is held, in Di Giorgio Importing & S. S. Co. v. Pennsylvania R. Co. (Md.) 8 L.R.A.(N.S.) 108, not to be bound to keep someone on watch at places where notice of the arrival of vessels is reported, so as to know when cars will be needed.

The insertion in a steamship ticket of a provision limiting the liability of the carrier for loss of baggage to a certain amount, unless the true value is declared and excess paid for at regular freight rates, is held, in Tewes v. North German Lloyd S. S. Co. (N. Y.) 8 L.R.A.(N.S.) 199, to operate to relieve the carrier from liability for such loss, even when due to its own negligence.

That a railroad company has no baggage master at its station upon arrival of a train carrying a parcel of baggage for hire as freight, is held, in Hicks v. Wabash R. Co. (Iowa) 8 L.R.A.(N.S.) 235, not to change the rule that the liability of carrier changes to that of warehouseman when the goods reach their destination.

A regulation of a street-car company requiring passengers transferring to a particular line to make the transfer at a point where it may be made more conveniently and safely than at another, which is usually overcrowded, is held, in Shortsleeves v. Capital Traction Co. (App. D. C.) 8 L.R.A.(N.S.) 287, not to be unreasonable.

The liability of a railroad company for the death of a passenger who, although under the influence of liquor, was not so intoxicated that the company would have been justified in refusing to accept him as a passenger, is denied in Thixton v. Illinois C. R. Co. (Ky.) 8 L.R.A.(N.S.) 298, where the carrier, after placing him in a place of safety at a junction where a change of cars was necessary, failed to maintain a guard over him, so that he wandered onto the track and was killed by an incoming train.

Railroad employees in charge of a passenger train are held, in Illinois C. R. Co. v. Cruse (Ky.) 8 L.R.A.(N.S.) 299, not to be bound to anticipate the need of assistance of a woman in feeble health, encumbered with a young child and a valise, so as to render the carrier liable in case she falls while attempting to carry her burdens off the train without assistance.

**Constitutional law.** The right of the leg-

islature to prohibit contractors for the public work of a municipal corporation to exact from their employees more than eight hours of labor daily is sustained in *Keefe v. People* (Colo.) 8 L.R.A.(N.S.) 131.

Placing a tax on the transfer of corporate stock only is held, in *People ex rel. Hatch v. Reardon* (N. Y.) 8 L.R.A.(N.S.) 314, not to be such an arbitrary classification as to deprive the owner of his property without due process of law.

Denying persons in a particular locality the right of selling intoxicating liquor, which is enjoyed by persons in other localities, is held, in *State ex rel. Gibson v. Richardson* (Or.) 8 L.R.A.(N.S.) 362, not to be an unconstitutional denial to the former of equal privileges and immunities.

**Contracts.** An indefinite offer to furnish ties within two years, the total amount not to exceed a certain number, followed by an acceptance of all that can be furnished within a year which come up to regular specifications, is held, in *Louisville & N. R. Co. v. Coyle* (Ky.) 8 L.R.A.(N.S.) 433, to become binding upon the delivery and payment for ties under it, so that neither party can withdraw from it within the year.

See also INFANTS.

**Corporations.** Subscribers to the stock of a corporation organized under the Constitution and laws of West Virginia are held, in *Security Trust Co. v. Ford* (Ohio) 8 L.R.A.(N.S.) 263, not to be able to avoid liability to pay full par value of their stock for the purpose of paying creditors, by inserting in the articles of incorporation filed in the office of the secretary of state a provision that the stock shall be sold at 50 cents on the dollar, and that when that is paid the stock shall be issued as fully paid and nonassessable.

A creditor's knowledge that stock is improperly issued as "full paid" and as "issued for property purchased," when the fact was otherwise, is held, in *Easton Nat. Bank v. American Brick & T. Co.* (N. J. Err. & App.) 8 L.R.A.(N.S.) 271, not to be sufficient to debar him from relief against the recipients of the stock.

A corporation whose president, who is also its business manager, knows at the time of making a loan on behalf of the corporation to another corporation that the stock subscriptions to the latter have been paid in property at a gross overvaluation, is held, in *Lea v. Iron Belt Mercantile Co.*

(Ala.) 8 L.R.A.(N.S.) 279, not to be able to hold the individual subscribers for the difference between the subscription and the value of the property paid in.

See also CONSTITUTIONAL LAW.

**Damages.** One who is not mentioned in a telegraph message, and whose interest therein is not communicated to the company, although he is in fact the one for whose benefit it was sent, and who paid the charge for its transmission, is held, in *Helms v. Western U. Teleg. Co.* (N. C.) 8 L.R.A.(N.S.) 249, to have no right to recover substantial damages for mental anguish caused by the failure promptly to transmit and deliver the message.

The right of the jury, in estimating the damages for breach of a contract to exhibit a machine at an exposition, to consider profits on sales which might have been made if the contract had been complied with, is denied in *Winston Cigarette Machine Co. v. Wells-Whitehead Tobacco Co.* (N. C.) 8 L.R.A.(N.S.) 255, although the breach was wilful and so late that no other provision for the exhibition of the machine could be made, where no contingent sales had been effected, and there is nothing to show that any would have been made.

The damages to be allowed for negligent loss of a manuscript which has not been put upon the market for sale so as to have a market value are held, in *Southern Express Co. v. Owens* (Ala.) 8 L.R.A.(N.S.) 369, to be properly based upon what it is worth to the owner, to ascertain which the cost of its production may be considered.

See also EVIDENCE.

**Death.** The enactment, many years after the adoption of a statute permitting a suit for the benefit of next of kin in case of death by wrongful act, of another statute permitting an executor or administrator to maintain an action for personal injuries which occurred in the lifetime of his testator or intestate, is held, in *Stewart v. United Electric Light & P. Co.* (Md.) 8 L.R.A.(N.S.) 384, to permit the maintenance of an action under each statute in case death occurs from a wrongful act from which injury occurred to the decedent in his lifetime.

**Deeds.** See REFORMATION OF INSTRUMENTS.

**Descent and distribution.** Under a statute permitting a person to adopt a child as his heir, an adopted child is held, in *Hocka-*

**day v. Lynn** (Mo.) 8 L.R.A.(N.S.) 117, not to be entitled, by right of representation, after the death of his adoptive parent, to take the intestate estate of the latter's brother as his heir.

**Easements.** A devise of a house and lot is held, in **Miller v. Hoeschler** (Wis.) 8 L.R.A.(N.S.) 327, not to carry by implication an easement in a tract lying between the house and the street, which the devisor has used as a dooryard, further than is necessary to give access to the street.

An alleged owner of a ditch across another's land is held, in **Blake v. Boye** (Colo.) 8 L.R.A.(N.S.) 418, to have no right to have the title to it quieted against a purchaser of the land without notice, where, at the time of the purchase, all traces of the ditch have been obliterated, since the purchaser is held to take his title free from the easement.

See also EVIDENCE.

**Eight-hour law.** See CONSTITUTIONAL LAW.

**Election of remedies.** One having a right of action in assumpsit for the price of goods is held, in **Clark v. Heath** (Me.) 8 L.R.A.(N.S.) 144, not to be precluded, by mistakenly bringing trover for their possession, from maintaining an action of assumpsit.

**Electricity.** That a municipal corporation operated an electric-light plant in a public capacity is held, in **Palestine v. Siler** (Ill.) 8 L.R.A.(N.S.) 205, to be no answer to a claim of liability on its part for permitting uninsulated wires to obstruct its public streets.

**Eminent domain.** See EVIDENCE.

**Equity.** See TRUSTS.

**Estoppel.** The executor and the legatee of testator's personal estate are held, in **Pond v. Pond** (Vt.) 8 L.R.A.(N.S.) 212, to be in privity to such an extent that the former may assert an estoppel which prevents a stranger from making claim to the estate against the legatee.

**Evidence.** One seeking to close a pass way over his land, which has been enjoyed by a neighbor for a period of forty years, is held, in **Smith v. Pennington** (Ky.) 8 L.R.A.(N.S.) 149, to have the burden of showing that the use was permissive, and not under claim of right.

Upon the question of damages to be allowed for diminution in value of the re-

maining property in an eminent domain proceeding, it is held, in **Boyne City, G. & A. R. Co. v. Anderson** (Mich.) 8 L.R.A.(N.S.) 308, that a phonograph may be operated before the jury to reproduce sounds claimed to be incident to the conduct of the petitioner's business, where there is evidence to show that the result is a substantially accurate and trustworthy reproduction of the sounds actually made.

**Executors and administrators.** See ESTOPPEL.

**Finder.** The finder of lost property or treasure trove is held, in **Kuykendall v. Fisher** (W. Va.) 8 L.R.A.(N.S.) 94, to acquire, by the act of finding, no right of property therein as against the owner, but to be entitled to the possession thereof as a quasi depositary, holding for the owner as against all other persons.

**Fixtures.** A gasoline engine placed on a stone foundation in a permanent building on a farm for operating machinery and grinding feed for stock is held, in **State Security Bank v. Hoskins** (Iowa) 8 L.R.A.(N.S.) 376, to be part of the realty, and to pass under a deed thereof, rather than under a conveyance of live stock, plows, and all other machinery and tools on the premises, in the absence of any agreement that it shall be personalty.

**Forcible entry and detainer.** An owner entitled to the possession of real property is held, in **Wilson v. Campbell** (Kan.) 8 L.R.A.(N.S.) 426, to have no right forcibly to turn out a tenant holding over after the expiration of his term; and, if he does so, the tenant is held to have a right to maintain an action for forcible entry and detainer against him.

**Fraud.** One taking chattels in payment of a pre-existing debt is held, in **Pelham v. Chattahoochee Grocery Co.** (Ala.) 8 L.R.A.(N.S.) 448, to be a purchaser within the rule that chattels cannot be recovered from a bona fide subvenee because of the fraud of the first purchaser.

**Guardian and ward.** See INCOMPETENT PERSONS.

**Highways.** One who leaves a horse attached to a wagon, standing unhitched in a public highway, and without having the lines within reach, is held, in **Denver v. Utzler** (Colo.) 8 L.R.A.(N.S.) 77, not to be entitled to recover for injuries caused by a collision with an obstruction in the highway in case the horse runs away.

The dedication of a street to the public, under a statute vesting the fee of the street in the public, is held, in *Leadville v. Bohn Min. Co.* (Colo.) 8 L.R.A.(N.S.) 422, not to deprive the one making it of the right to extract the minerals from beneath it so far as it can be done without interfering with the street uses.

See also ELECTRICITY; NUISANCE; PUBLIC IMPROVEMENTS.

**Incompetent persons.** One renting from the guardian property belonging to an insane person is held, in *Reams v. Taylor* (Utah) 8 L.R.A.(N.S.) 436, to have no right to hold the latter's estate liable for injuries caused by breach of the guardian's promise to make repairs.

**Infants.** Repudiation, after becoming of age, of a contract to pay for merchandise which had been furnished to the promisor during minority, is held, in *Lamkin & Foster v. Ledoux* (Me.) 8 L.R.A.(N.S.) 104, not to revest title in the vendor.

See also MASTER AND SERVANT.

**Injunction.** The right of equity to interpose to restrain the adoption by the school board of the report of a committee for the change of school text-books is denied, in *Harley v. Lindemann* (Wis.) 8 L.R.A.(N.S.) 124, even though the statute under which the action purports to be taken is unconstitutional.

**Insurance.** The surrender of the policy within the six months is held, in *Lenon v. Mutual L. Ins. Co.* (Ark.) 8 L.R.A.(N.S.) 193, not to be of the essence of a contract of insurance providing that if, after a specified number of payments, the policy is forfeited for nonpayment of premiums, upon the surrender of the policy "within six months," a paid-up policy will be issued for such an amount as the reserve on the policy will purchase, so that the paid-up policy may be demanded upon surrender of the old one within a reasonable time after the expiration of the six months.

An exception in a policy insuring against loss caused by the accidental discharge of an automatic fire extinguisher, of injury from leakage resulting from earthquakes or cyclones, or from blasting or explosions, is held, in *Maryland Casualty Co. v. Finch* (C. C. A. 8th C.) 8 L.R.A.(N.S.) 308, to exclude loss from leakage caused by a wind storm resembling more technically a tornado than a cyclone, and causing the injury

by its high velocity rather than its circular motion.

**Intoxicating liquors.** See CONSTITUTIONAL LAW.

**Intoxication.** See CARRIERS.

**Judgment.** See LIMITATION OF ACTIONS.

**Landlord and tenant.** See INCOMPETENT PERSONS.

**Limitation of actions.** A statute requiring actions brought by the heirs of a deceased person for the recovery of real property descending to them, but sold by an administrator of the estate of decedent under an order of court directing such sale, to be commenced within five years after the date of the recording of the deed made in pursuance of such sale, is held, in *O'Keefe v. Behrens* (Kan.) 8 L.R.A.(N.S.) 354, to apply to sales which are void for want of notice to the heirs of the proceedings upon which the deed is based.

An action to enforce the implied promise of a devisee of real estate to pay an annuity, which the will makes a lien on the real estate, is held, in *Stringer v. Stephens* (Mich.) 8 L.R.A.(N.S.) 393, to be governed by the statute of limitations applicable to parol contracts generally; and it is therefore held that the right to maintain it may be barred, although the lien against the real estate might still be enforced.

A judgment is held, in *Spilde v. Johnson* (Iowa) 8 L.R.A.(N.S.) 439, to be a contract debt within the meaning of a statute permitting a new promise to revive such debts after they have been barred by the statute of limitations.

The rule that a new promise, or part payment, suspends the operation of the statute of limitations, or revives and continues the cause of action, is held, in *Olson v. Dahl* (Minn.) 8 L.R.A.(N.S.) 444, to be limited to contracts express or implied, and not to include a judgment for the recovery of money, which is not a contract within the meaning of the term.

**Manuscript.** See DAMAGES.

**Master and servant.** That a boy employed in a mill disobeyed a printed rule in obeying the direction of his foreman to remove threads from the cogs of a machine in motion is held, in *Dougherty v. Dobson* (Pa.) 8 L.R.A.(N.S.) 90, not to shield the employer from liability for injuries resulting therefrom.

An employer who engages and places at a dangerous employment a minor who, al-

though instructed, lacks sufficient age and capacity to comprehend and avoid the dangers of the employment, is held, in *Bare v. Crane Creek Coal & C. Co. (W. Va.)* 8 L.R.A.(N.S.) 284, to be guilty of actionable negligence if he has, or should have, notice of the minor's age and lack of capacity.

**Mental anguish.** See **DAMAGES**.

**Mines.** See **HIGHWAYS**.

**Mortgage.** While the general rule is that a subsequent purchaser or lessee of mortgaged property, taking under a conveyance or lease from the mortgagor, takes subject to the mortgage, yet, where the mortgage in express terms or by clear implication authorizes the mortgagor to make such sales or leases for the benefit of the mortgagee, it is held, in *Sammons v. Kearney Power & Irrig. Co. (Neb.)* 8 L.R.A.(N.S.) 404, that a sale or lease made in pursuance of such authority is binding on the mortgagee, and those claiming under him.

**Municipal corporations.** An ordinance forbidding peddlers who walk about the streets and other public places selling small wares to remain in any one place except when actually engaged in making sale of an article is held, in *Shreveport v. Dantes (La.)* 8 L.R.A.(N.S.) 304, to be reasonable, and not to infringe constitutional rights.

See also **CONSTITUTIONAL LAW**; **ELC**  
**TRICITY**.

**Negligence.** The owner of a runaway horse is held, in *Damonte v. Patton (La.)* 8 L.R.A.(N.S.) 209, to be liable for an injury inflicted by it upon a person without contributory fault, where, while the driver of the horse went to get his hat, which had blown off, the animal, which had been left unfastened, ran away.

**Nuisance.** The obstruction by a public nuisance of the direct route between one's property and a neighboring city, so as to compel him to take a circuitous route to reach it, is held, in *Sloss-Sheffield Steel & I. Co. v. Johnson, (Ala.)* 8 L.R.A.(N.S.) 226, to be such special injury as to entitle him to maintain a suit to abate the nuisance.

**Parent and child.** See **DESCENT AND DISTRIBUTION**.

**Peddlers.** See **MUNICIPAL CORPORATIONS**.

**Phonographs.** See **EVIDENCE**.

**Pleading.** New matter in the reply, which the plaintiff is forced to plead in order to meet the allegations of the answer, is held,

in *Hunter Milling Co. v. Allen (Kan.)* 8 L.R.A.(N.S.) 291, not to constitute departure if it does not contradict the facts stated in the petition, and is not adopted as a new basis for relief in place of the cause of action presented by the petition.

**Public improvements.** Failure to comply with a statute requiring public officers to advertise for bids for street work is held, in *Dillingham v. Spartanburg (S. C.)* 8 L.R.A.(N.S.) 412, not to invalidate a contract made without such advertising, unless the statute makes it a condition of the exercise of the power to contract.

**Reformation of instruments.** The right to reform a deed giving a life estate with remainder to the children of the life tenant, and to her brothers and their children, so as to vest a fee in the first taker, after a conveyance by the brothers to the life tenant of their interest by warranty deed, is denied in *Downey v. Seib (N. Y.)* 8 L.R.A.(N.S.) 49, on the ground that there is no one to represent the interests of the unborn children.

**Replevin.** The right of one from whom property has been taken in replevin to maintain a similar action for its recovery is denied in *Kierbow v. Young (S. D.)* 8 L.R.A.(N.S.) 216.

**Schools.** See **INJUNCTION**.

**Street railways.** See **CARRIERS**.

**Taxes.** The power of the legislature to bar the right of the owner of unoccupied land to question the validity of a tax sale, although there has been no adverse possession on the part of the tax purchaser, is sustained in *Nind v. Myers (N. D.)* 8 L.R.A.(N.S.) 157.

See also **CONSTITUTIONAL LAW**.

**Telegraphs.** See **DAMAGES**.

**Time.** See **INSURANCE**.

**Trading stamps.** An ordinance forbidding merchants to give out trading stamps in their business is held, in *Denver v. Frucauff (Colo.)* 7 L.R.A.(N.S.) 1131, not to be authorized by constitutional and statutory provisions making lotteries and gift enterprises unlawful.

**Trial.** That a stipulation in a bill of lading that a claim for damages for injury to freight must be presented within ten days after the freight is removed from the car cannot be said, as matter of law, to be reasonable when applied to live stock, the character of the injury to which cannot be determined within ten days, is held, in *Wa-*

**bash R. Co. v. Thomas (Ill.) 7 L.R.A.(N.S.) 1041.**

**Trover.** See ELECTION OF REMEDIES.

**Trusts.** To call into activity the power of equity to control the discretion of the trustee and require equal advancements to all the children, under a will leaving testator's estate to his widow, with the expressed desire that she make advances "to the children" as circumstances may require, keeping an account, so that they shall enjoy as nearly as possible in equal degree the estate, it is held, in *Trout v. Pratt (Va.) 8 L.R.A.(N.S.) 398*, that it must be shown that she is acting in bad faith, or has in some matter abused the confidence reposed in her.

The existence of a public free-school system is held, in *Tincher v. Arnold (C. C. A. 7th C.) 7 L.R.A.(N.S.) 471*, not necessarily to render invalid a trust for the benefit of boys unable to educate themselves, on the theory that the trust has no field for operation, since, notwithstanding such system, there may be boys who, by reason of poverty or other circumstances, cannot avail themselves of it.

In case of a trust for the heirs of a certain person who shall be living at the death of another, prior to the latter's death, it is held, in *Allen v. White (Colo.) 7 L.R.A.(N.S.) 999*, that no action can be maintained to establish the trust against an assignee of the trustee, or to impound the rents and profits.

A devise to the vestry of a parish, to be used for such church purposes as the rector of the church shall or may direct, is held, in *Doan v. Vestry of the Parish of the Ascension (Md.) 7 L.R.A.(N.S.) 1119*, to create no trust, but to be for the corporate purposes of the vestry, and to vest the absolute title in it.

**Vendor and purchaser.** The refusal of a purchaser of land under an executory contract to perform his agreement is held, in *Cowdrey v. Greenlee (Ga.) 8 L.R.A.(N.S.) 137*, not to give the vendor the right to resell the land at the risk of the purchaser, and hold him liable for a deficiency in the price realized, since this remedy is in terms restricted by Ga. Civ. Code to cases where a bidder at judicial or quasi-judicial sale refuses to comply with his bid.

**Voters and elections.** See ELECTIONS.

**Voting machines.** See ELECTIONS.

**Waters.** Breach of a contract to connect

property with a water main and erect a hydrant for its protection from fire is held, in *Hunt Bros. Co. v. San Lorenzo Water Co. (Cal.) 7 L.R.A.(N.S.) 913*, not to render the company liable for the value of the property in case it is destroyed by fire for want of water to extinguish it, where no time is fixed when delivery of the water shall commence.

A private waterworks corporation using the streets of a city on the condition that it lays therein its mains and furnishes the municipality and its inhabitants with a supply of water at fixed tolls is held, in *Freeman v. Macon Gas Light & Water Co. (Ga.) 7 L.R.A.(N.S.) 917*, to be liable as a public-service corporation for its wrongful act in cutting off the supply of water which it is under a duty to furnish to one of its patrons as a member of the public at large.

**Wills.** Under a will directing the executors and trustees thereby created to sell all the residuary real estate and divide the proceeds into parts to be paid to, or held in trust for, testator's children, and providing that, in the event of the death of any child before the payment to him of his share, the executors shall convey the share of the one so dying to his issue absolutely, and, if he die leaving no issue, then the share shall be divided among the survivors, it is held, in *March v. March (N. Y.) 8 L.R.A.(N.S.) 180*, that the daughter of a child takes the parent's share in case of his death before the property is sold, the trustees acting in good faith, although he has, by will, disinherited her.

A bequest by a woman of all money which may become due from insurance upon her husband's life at the time it shall be actually collected and received by her executors is held, in *Nusly v. Curtiss (Colo.) 7 L.R.A.(N.S.) 502*, to be specific, and deemed by the collection of the fund by the testatrix and her commingling it with her other funds.

A proper attestation of a will by a witness is held, in *Re Pope (N. C.) 7 L.R.A.(N.S.) 1193*, to be effected, the other requirements being present, if he holds the end of the pen while it is guided by another in the writing of his name, even though such aid is not necessary because the witness can write.

## New Books.

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"Nevada Statutes." Passed at 23d Session of Legislature. 1907. \$2.75.

"Shepard's Alabama Citations." 2d ed. 1907. \$10.

"Digest of Insurance Cases." 1907. By Guilford A. Dietsch. \$3.

"Mississippi Legal and Business Forms, Annotated." By W. Hemingway. 1907. \$5.

"Sayler's Form Book." By Milton Sayler. 1907. Buckram, \$3.

"A Treatise on Electric Law." By J. A. Joyce. 2 Vols. 1907. Canvas, \$12.75 delivered.

"Annotated Bankruptcy Acts." With amendments to date with general orders. By Edwin C. Brandenburg. 1907. Paper, 50 cents.

"Illustrative Cases on Personal Rights and the Domestic Relations." By C. Erehart Chadman. 1907. \$4.

"The Taxation of Corporations in Massachusetts." By Harry G. Friedman. 1907. Cloth, \$1.50 net.

"A Treatise on Pleading and Practice under the Civil Code of Kentucky." By J. E. Newman. 2d ed. Revised and Enlarged. To which has been added a treatise on procedure in the court of appeals, by G. Du Relle and F. P. Caldwell. 1907. Buckram, \$7.50.

"A Course of Study in Law." With especial reference to the New York State Bar examinations. By C. H. Paradis. 1907. Paper, \$1.

"Annotated General Incorporation Laws of South Dakota." By C. E. DeLand. 3d ed. 1907. Paper, \$1.25.

"Georgia Form Book." By Howard Van Epps. 1907. Cloth, \$5.

"Annotated Pocket Code of Virginia." By Sam. N. Hurst. 2d ed. 1907. \$6.

"Wilson's Mining Laws." Laws of the United States, Arizona, California, Nevada, and Utah, with forms and corporation laws of Arizona. Compiled by Calvert Wilson. Revised to May 1, 1907. Cloth, \$1.

"Larceny and the Perkins Case."—7 Columbia Law Review, 387.

"Publicum Bonum Private Est Preferendum."—65 Central Law Journal, 100.

"Judicial Liability."—32 Law Magazine and Review, 417.

"Specification of Goods as Affecting Documents of Title."—32 Law Magazine and Review, 458.

"A Study of Mexican Criminal Procedure as Illustrated in the Barillas Case."—19 Green Bag, 462.

"Common Carriers in France."—19 Green Bag, 475.

"Is a Person Liable to a Legal Action for Not Saving Life, When He is under No Apparent Obligation to Use Effort to This End?"—65 Central Law Journal, 62.

"The Defense of Insanity in Criminal Cases, and Medical Expert Testimony."—15 American Lawyer, 309.

"The Influence of Railroad Decisions in Corporation Law."—15 American Lawyer, 315.

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## The Humorous Side.

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**JUDGES AGAINST JACKASSES.**—Now along comes the brigade of roaring editors condemning this decision of the supreme court that the increase in salaries for judges must stand because it was a perfectly proper law for the legislature to pass, and that the legislature acted entirely within its constitutional functions when it passed such a law. We confess to a dislike for this editorial roar against the supreme court of this state. To roar as these editors have been roaring isn't dignified. It doesn't prove anything. To roar isn't to convince. There isn't one good, convincing fact in all the editorial roars of these Connecticut editors. Bellowing on the part of these editors against the highest court in the state sounds lionlike of course, sounds fearless to be sure, but isn't it suggestive of the jackass, too? These editors should do a little more thinking and less roaring. To persons who are not given to roaring, it will occur that the judges of the supreme court only performed their honest duty under the circumstances, and gave a decision in accordance with the law and the Constitution.

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## Recent Articles in Law Journals and Reviews.

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"Spurious Interpretation."—7 Columbia Law Review, 379.

**A FERVID PETITION.**—The following appeal to the President is published in the New York Sun:

*At Presidente T. Roosevelt, Washington, D. C.:*

"In the city of Del Rio, Texas, the 7th day of June, of 1907, the undersigned that composed the Mexican Colony in this locality, in the Hall of the 'Club Amantes de la Libertad' profoundly indignant against the barbaric attempts committed by the agents of the military elements of the Government of Mexico, that without respect to the individual guarantee, and lawse of neutrality between both Republics, have arrested and sequestered from American soil, Manuel Sarabia, that as political refugees and confident under the protection of the Stars and Stripes, took his residence at Douglas, Arizona, where he lived and worked honestly. As this fact of violence is an outrage to the Constitution, and trespassing the divisorial line, of this country, that always have protected honorable men of liberal ideas that are prosecuted by the despotism of a Dictator that tarnishes those glorious actiones of the Democratic Government; and as this act against individual Liberty fixes a bad foregoing, because it tramples villainously the efficacy of the laws of this nation, whose high destiny you properly govern; with this motive we energetically protest in the name of International Rights, and in the name of the sacred statute laws of humanity, against this attempt so unjust as inhuman, we beg of you most sincerely to interpose your valuable influence, so that this political Offender be restored by diplomatic vias to American soil, so if he is guilty in any way to be judged according to the laws and condemned thereupon the facts of his crime; also we request the punishment for the violators of the laws of reciprocallness and as we hope of your high criterion and of year honest administration in faith of which we all sign the present protest."

**PROFESSIONAL AMENITIES.**—As an offset to the proposed decree published in our July issue which was submitted to the court as a joke in an Iowa case but which was not

approved, the following was offered to turn the joke in the opposite direction. This also failed to get the court's approval:

State of Iowa, ——District Court.

O, ——, plaintiff,

vs.

O, —— and L, ——, defendants.

} Decree.

And now, to-wit, the Court, having been asked to make certain findings regarding the assault committed by defendant upon plaintiff's attorney, Mr. A finds as true the following facts regarding defendants' attorney, Mr. B.

First; It is specially found that this is the third assault committed by clients of Mr. B. upon the person of his rival, Mr. A.

Second; The exuberant glee exhibited by Mr. B on learning that his client had delivered an unexpected blow upon the back of the head of Mr. A is almost as touching as the blow itself. The court is deeply affected at the joy of Mr. B who has long desired to see something done to Mr. A which he was himself totally unable to inflict.

Third; The condition of Mr. B's mind may be explained upon the hypothesis of *cerebral storms*, complicated with *wallet depleticus* and *political atrophy*, arising as follows: Br. B. was caught with the goods on his person. He claimed to have been shamelessly set upon by the county supervisors and others, assaulted, drugged, raped and his pockets filled, while in a semi-conscious condition, with some six or seven thousand dollars surreptitiously drawn from the county treasury. Mr. A and other county seat lawyers brought suit and compelled him to repay the amount with interest and costs to the county treasury. See — v. —, — Ia. —, — N. W. —. When lawyers, courts and people refused to believe the story of the rape, smouldering cerebral fires resulted, which have been aggravated by subsequent political events.

. . .

\_\_\_\_\_, Judge.

Blank cartridges having been fired by each side, honors may be deemed equal.

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